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" THE LORDS found, that the disposition in favour of Alexander Cuming, and Anna Garden, his spouse, and longer liver of them, for her life-entire use alienarily, in so far as it provides the life-entire of the subjects therein mentioned to the said Anna Garden, became void by the dissolution of the marriage between the said Alexander Cuming and Anna Garden, by the death of the husband within year and day of their marriage, without a living child having existed thereof."

Reporter, Hailes.

Act. Buchan Hepburn.

Alt. Russel.

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Eol. Dic. v. 3. p. 289. Fac. Col. No 28. p. 50.

S E C T. II.

Rights flowing from third parties in contemplation of the marriage.

1562. January 30.

ROBESON against JACKSON.

No 377.

TAK and assedatioun set to ane man and a woman as his future spouse, for all the dayis of ather of thair lifetimes, be vertue, and in contemplatioun of marriage to be solemnizat betwix thame, and thairefter the man deceis befor the completing of the said marriage; the woman may crave na richt nor titill to the said tak, nor alledge the samin to pertene to hir induring hir lifetime, albeit scho be in possessioun be vertue thair of befor his deceis quha sould have bene hir husband.

Eol. Dic. v. 1. p. 413. Balfour, (ASSEDATION.) No 5. p. 201.

1606. February 6.

LAIRD COVINGTON against VEITCH.

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A person granted to his sister a bond of provision, bearing love and favour, and in satisfaction of her bairn's part of gear, payable the first term after her marriage. She leaving

THE Laird of Covington pursued William Veitch, son to umquhile Patrick, to hear and see him decerned to refund and pay back to him the sum of L. 1000 which he received in name of tocher with the said Covington's sister, whom William Veitch married, conform to his contract of marriage and acquittance given thereupon, because his said wife died within year and day. It was *alleged* by the defender, That the summons was not relevant, because albeit *in dote profectitia*, the father, of the law, has repetition of the tocher, his daughter dying within year and day; yet, *secundum L. 4. C. soluto matrimonio quemadmodum dos petatur*, that has not place *in dote adventitia*, which the woman obtains by other

means than by her father *qui tenetur eam dotare secundum vires patrimonii*; and so this tocher being *dos adventitia*, the brother had no repetition thereof, especially because the defender offers him to prove, that by a bond made by this pursuer to his umquhile sister, he was bound to pay to her within half-a-year after her marriage for brotherly love, for help to her marriage, and in contentation of her bairn's part of gear which she might claim by decease of her father and mother, the sum of L. 1000, and to pay to her the sum of L. 100 yearly for the annualrent thereof, as well not infest as infest; so it being her own gear depending upon a preceding bond, it could not be repeated after her decease, seeing she, by her testament, had nominated her husband her executor, and he had confirmed this same sum. It was *answered*, That in Scotland, by our law, there was no difference *inter dotem profectitiam et adventitiam*; and the father of the woman being deceased, if her brother tocher her, that same reason which brings back the tocher-good to the father, will give repetition to the brother, who paid the tocher with his own gear, if his sister die within year and day; and, albeit mention be made in the bond that it is given in contentation of her bairn's part of gear, yet she had no bairn's part of gear, because her father and mother were very mean, and had little or no gear at their decease; and if the defender would condescend upon the gear which she must have, fallen by her father and mother's decease, they should find it relevant to be admitted to probation *pro tanto*. THE LORDS found, that seeing this tocher good contained not only *dotis causam*, but *proprium defunctæ peculium* her bairn's part of gear through her father and mother's decease, that it was a cause onerous which made her brother debtor *ex necessitate et non ex libertate*, and therefore they would not astrict the defender to condescend upon the quantity of the bairn's part of gear; but found his exception relevant by the bond, contract, and testament produced; and found, that of the law, *peculium adventitium*, was not subject to restitution.

Fol. Dic. v. 1. p. 415. Haddington, MS. No 987.

1610. June 8.

THOMAS CALDER and ANDREW MORISON, *against* ELIZABETH ROSS and ALLAN M'INTOSH her Spouse, and SIR JOHN CAMPBELL of Calder.

THOMAS and Andrew, tenants of the lands of Easterdues, summon Elizabeth and Sir John to hear and see it found whilk of them they should answer and obey of the duties of the said lands. *Alleged* for Elizabeth, That she ought to be answered, and Sir John can have no right thereto; because, by contract matrimonial betwixt Sir John and umquhile Duncan and her they have conjunct-fee in the lands redeemable by 3000 merks; lykeas marriage followed, and the lands are not redeemed. *Answered* and *replied* for Sir John, The allegiance ought to be repelled, and he answered, because Sir John is infest and in possession, and

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the same by testament to her husband, and dying within the year, the Lords found the brother was not entitled to repetition, since the sum belonged to the wife, which she might dispose of at her pleasure with her husband's consent.

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Found, that the marriage dissolving by the husband's decease within the year, all things must return *hinc inde*, not only with respect to the defunct's heirs, but also with respect to a third